Supreme Court, U.S.
FILED
JUN 1 1995
OFFICE OF THE CLERK

(2)

No. 94-1826

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1994

J. Michael Hayfield and Ernest A. Husarick,

Petitioners,

v.

Margaret McIntyre,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

This Petition for a Writ of Certiorari is the second one that has been filed that contests the decision of the United States Court of Appeals for the Sixth Circuit in *Hansen, et al., vs. Westerville City School District Board of Education, et al.*, Nos. 93-3231/3303, (initially decided on November 7, 1994, Petition for Rehearing denied on January 19, 1995). The first Petition was filed with this Court by the Plaintiffs-Appellants below and docketed on April 17, 1995 and has been assigned Case No. 94-1696. While different issues have been raised in both petitions, they are pieces of a complex whole.

Some of the facts that deal with the particular matter referenced by the Petitioners herein, were before the Court in *McIntyre v. Ohio Elections Comm'n*, No. 93-986, Decided April 19, 1995. *McIntyre* involved the distribution of anonymous handbills by the late Margaret McIntyre in front of public schools located in Westerville, Ohio on two successive evenings in April of 1988.

This matter involves the same basic facts, but some of the background and surrounding details in evidence here were not included in *McIntyre, supra*. The progression of *McIntyre v. Ohio Elections Comm'n, supra* through the Ohio courts prior to its acceptance by this Court, did not permit the inclusion of important details which are a part of the record here.[1] For example, this Court was not informed at the time that *McIntyre* was argued that on the evening of April 27, 1988 some of Mrs. McIntyre's leaflets were confiscated by then Assistant Superintendent J. Michael Hayfield, a Petitioner herein.[2]

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[1] Due to the specific issue raised in *McIntyre, supra* much of the background that is before the Court here was not germane to the issue either in the Ohio courts or this Court. Too, since the process was appellate in nature from the beginning of Mrs. McIntyre's involvement with legal counsel, there was scant opportunity to augment the record with facts not brought out during the truncated hearing before the Ohio Elections Commission.

[2] Importantly, Petitioner Hayfield admitted in deposition that "its possible" he may have made an effort to take these leaflets. (Note: References herein to the Joint Appendix in the Sixth Circuit are delineated Jt Apx.) Jt Apx at 1371-72.

Similarly, this Court was not told that Petitioners Ernest A. Husarik (the Westerville City School District Superintendent of Schools) and J. Michael Hayfield threatened to call the police if Mrs. McIntyre did not cease distributing leaflets and leave the school property.

Further, it was not pointed out that the filing of the complaint against Mrs. McIntyre in the Ohio Elections Commission by Petitioner Hayfield occurred while Gordon V. Rood and Carl H. "Pete" Huffman (Plaintiffs-Appellants below) were awaiting trial on charges of disturbing a lawful meeting. Mrs. McIntyre, who had become involved with the CATW (Citizens Against Tax Waste) group several months after the leafleting incidents, was scheduled to be an important witness for the defense in that trial. She had been present at the October 24, 1988 school board meeting when the two men were arrested and had witnessed firsthand most of the events that took place. Respondents believe that the timing of the filing was not an accident.

These important facts, and the many others delineated in the larger case in the courts below, paint a picture that underscores the importance of interpreting this incident within a framework which includes the overall panorama of a system that has, thus far, permitted public officials to unjustly threaten, coerce and discredit citizens whose only "crime" was disagreeing with the powers that be.

ARGUMENT

I. RESPONDENTS BELIEVE THAT THIS COURT SHOULD CONSOLIDATE THIS PETITION WITH THE PETITION IN 94-1696 AND GRANT CERTIORARI

The arguments put forth by Petitioners herein are based to a significant extent on the presumption that Ohio Revised Code § 3599.09 would be found to be constitutional by this Court. It was not. That statute was struck down in *McIntyre v. Ohio Elections Commission*, No. 93-986, decided April 19, 1995. There are, however, other arguments put forth by Petitioners that do not rely on the constitutionality of that statute which Respondents desire to address.

A. Qualified Immunity

Petitioners herein argue that the Sixth Circuit should have decided that the taking of Mrs. McIntyre's leaflets was reasonable, that its illegality could not have been known or anticipated by the Petitioners and, therefore, that the Petitioners should be granted qualified immunity.

Respondents disagree. The taking of Respondent McIntyre's political leaflets cannot be justified as a legitimate act when the very nature of the taking is contrary to generally accepted societal standards which hold that no one has a right to take something from another that is not freely given. Even Ohio Revised Code § 3599.09 failed to confer a right of confiscation on one who observed an infraction of the law against the "illegal" property of the "law breaker."

Petitioner Hayfield admitted that he read the leaflet and that he recognized it was in opposition to the levy. Jt Apx at 1363 and 1370. Petitioner Husarik spoke about the leaflet's content to the parents who participated in the meeting the night of April 27, 1988 and circulated a memo to the Board of Education members the following day in which he referred to the flyer's "inaccuracies." A copy of the memo appears as Jt Apx Page 1068. To the extent that the Petitioners were familiar with the leaflet's content, and felt

constrained to respond to its message, it is difficult to imagine that these two people, who were the highest ranking salaried employees of the Westerville City School District, simply could not understand that they were violating a citizen's First Amendment rights by confiscating her obviously political leaflet.[3] Respondents do not believe that the facts demonstrate that a "... 'legitimate question' as to whether an official's conduct constitutes a constitutional violation..." exists such that the Petitioners would be entitled to qualified immunity. *Wiley v. Doory*, 14 F.3d 993, 995 (4th Cir. 1994). Nor do Respondents believe that under the circumstances Petitioners could have possibly suspected that, in their role as 'reasonable officers,' (See *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).) they were not violating Mrs. McIntyre's First Amendment rights.

The court below stated that "a reasonable school official would have known that he could not interfere with a citizen's campaign efforts against a tax levy by confiscating her materials and threatening to call in the police." Sixth Circuit Opinion at B-23 of Petition Appendix. Respondents agree.

1) Suspicious Timing

Then Assistant Superintendent Hayfield stated in deposition[4] that he filed charges against Mrs. McIntyre with the Ohio Elections Commission a year after her "failure" to comply with Ohio Revised Code § 3599.09 because he saw yard signs [of hers] that demonstrated that she was still not complying with the applicable statute (see Hayfield deposition at pp. 132-136.).

If that statement was accurate, one could conclude that the filing against Mrs. McIntyre by Petitioner Hayfield came about as the result of a potent resentment held by the Assistant Superintendent or a strong personal difference between the two parties. In that view, it might not be considered anything of a sinister or malevolent nature. However, there is an obvious problem with Mr. Hayfield's

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[3] The fact that the leaflet was clearly contrary to the position that both of the officials supported makes the action even more suspect.

[4] Petitioner Hayfield's deposition was filed with the District Court below on October 23, 1992. No docket number was assigned.

explanation. The yard signs[5] that were supposedly the catalyst for the filing, did not appear in the Westerville area until several months after Petitioner Hayfield filed the original complaint.[6] It is, therefore, difficult to believe that Petitioner Hayfield filed his complaint because of errors in signs that he could not have even seen prior to the filing.

This significant discrepancy between the facts and the memory of Petitioner Hayfield is not the only example of Petitioner Hayfield's conflicting statements in this matter. During testimony taken before the Ohio Elections Commission Mr. Hayfield stated that "(a)fter the meeting we found most of the fliers were distributed in a wastepaper can, and I had the custodian in each meeting go through to see if we could find any piece of literature that had the names affixed to it." (Included in the Joint Appendix submitted to this Court in the McIntyre case at Page 41 and reproduced here as Page 1 of the Appendix.) During depositions taken in this case, Petitioner Hayfield clearly contradicted his earlier statement.[7] In this latter instance he flatly denied that he asked a custodian to go through the wastepaper baskets. Jt Apx at 1359.

These contradictions in testimony are reason to suspect that either Petitioner Hayfield could not remember what had taken place or was intentionally fabricating testimony to hide what he knew to be the truth.

Because it is clear that Petitioner Hayfield did not relate to Mrs. McIntyre's counsel the actual reason for filing the Ohio Election Commission complaint almost a year after her "illegal" action took place, but, offered, rather, a fabricated explanation, it is reasonable

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[5] As pointed out on Page 19 of the Petition herein, Mrs. McIntyre ran for the school board in 1989. As a part of that campaign she did have signs printed which were placed in the yards of school district residents.

[6] Mrs. McIntyre ran for the Board of Education in the fall of 1989 in conjunction with the general election in November. Under Ohio Revised Code § 3513.255, a candidate must file Petitions to place her name on the ballot not later than 4:00 p.m. of the seventy-fifth day prior to the general election. Her signs did not appear in the Westerville area until after her petitions were filed.

[7] The Ohio Elections Commission testimony was given on March 19, 1990. Petitioner Hayfield's deposition was taken on August 14, 1990, approximately five months later.

to ask what was the real reason for Petitioner Hayfield's delayed filing? There obviously was some purpose for the postponement.

If Petitioner Hayfield did not know or remember the reason, he could have stated that in deposition. Why make up a story? Ohio Supreme Court Justice Craig Wright, opined in his dissent that "(i)ndeed, in this case, it is possible that the very filing of the charge against McIntyre was in some measure in retaliation for her opposition to the school levy. Certainly, the timing of the filing is suspect." *McIntyre v. Ohio Elections Commission*, 67 Ohio St. 3d 391 (1993). Respondents agree.

2) Curtailing Illegal Activity

Petitioners have maintained throughout this case that their confrontations with Mrs. McIntyre on April 27 and 28, were based on their interest in making sure that no laws were being broken on school property.[8]

If Petitioners' statement is accurate and the main thrust of their actions was making sure nothing illegal took place on school property, why is the political persuasion of the "illegal" pamphlet notable?[9]

Respondents point to the reference in Petitioners' own Statement of the Case in their Petition wherein they describe the leaflets as being "in opposition to the levy." (Page 3) If "their sole motivation was to ensure there was not illegal activity occurring on school property," (Page 19 of Petitioners' Memorandum in support of their Motion for Summary Judgment, at Jt Apx Page 132), then why do Petitioners find it noteworthy to indicate which side of the levy issue the leaflet supported? Certainly, if the leaflet was "illegal," it was not due to the political position it espoused, but, rather, its lack of disclosure.

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[8] Respondents point out that this argument assumes the truth of the claim by Respondents that Petitioners both threatened Mrs. McIntyre with arrest if she didn't leave the grounds and took some of her leaflets.

[9] It is clear that Mrs. McIntyre's leaflet was undoubtedly anti-levy. It did not mince words in its recommendation when it asked those reading it to "Please Vote No - Issue 19." [See Footnote 2 in this Court's majority opinion in *McIntyre, supra.*]

Based on Petitioner's argument one would have to believe that Dr. Husarik and Mr. Hayfield would have confiscated and threatened to call the police if a citizen supporting their political position attempted to circulate a flyer which violated Ohio Revised Code § 3599.09 just as readily as they took that action against Mrs. McIntyre. However, based on the most rudimentary understanding of human nature, Respondents believe that a supporter of the levy would not have been threatened as was Mrs. McIntyre, nor would a supporter's leaflets have been seized.

Further, Respondents believe that at this point in the proceedings (i.e. the summary judgment stage), the facts in question are to be interpreted in favor of the non-moving party, *EEOC v. Univ. of Detroit*, 904 F.2d 331, 334 (6th Cir. 1990). In spite of the Petitioners' denial, such an interpretation would have to conclude that Petitioners' actions were based on the content of Mrs. McIntyre's flyer rather than its supposed illegality.

B. The No Harm, No Foul Philosophy

Petitioners argue further that because Mrs. McIntyre was not intimidated by their comments or actions that there was therefore no "chilling" and she has no case. Respondents acknowledge that Mrs. McIntyre was not dissuaded by the words and actions of Petitioners here (nor the words and actions of the other Respondents in Case No. 94-1696) from expressing her viewpoint. She fervently believed that she had a right to state her opinion and that it would be a mistake for her to run and hide or allow herself to be deterred from speaking because her views were not popular with those in positions of leadership and influence. But, that does not mean that Mrs. McIntyre's path was not strewn with more personal challenges than those of the average American who seeks to express a political opinion and is not threatened by those in positions of power.

The reason that threats[10] are effective in controlling the one threatened is because no one really knows when or if they will be carried out. It is like waiting for the proverbial "other shoe" to drop.

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[10] The Random House Dictionary of the English Language describes "threat" as "an indication or warning of probable trouble." p. 1369 of the 1968 College Edition, First Printing, Published by Random House, Inc., New York.

One is never free of the nagging thought that the threat could be carried out at any moment. That suspicion robs a person of concentration and peace of mind. Few persons look forward with great aplomb to confrontations even when they know (or believe) that they will prevail.

The passages from Mrs. McIntyre's deposition quoted by Petitioners show that she had a courageous spirit and that she forged ahead in spite of the threats, but they do not demonstrate that she was not threatened or that she did not feel threatened. In fact, she did indicate that she was more hesitant afterward about what she did. Jt Apx at 1459. She just did not let that stop her.

Petitioners' argument relative to Mrs. McIntyre (and in regards to all of the Respondents here [Plaintiffs-Appellants below]) is the same here as it has been for over six years. They say that because the Respondents were not threatened enough to have been discouraged from activity, that there is no harm. They ignore the fact that the Respondents felt these threats. They ignore the fact that the Respondents were required to function with the additional burden of knowing that the officials in question had the power and authority to carry out their threats and harass them - make their lives more complex and filled with additional stress far beyond that of the average person because they (the Respondents) were willing to oppose the position of those in power (the Petitioners). Certainly, the "trial" that Mrs. McIntyre went through over the distribution of a simple leaflet which opposed an additional tax on property[11] should be firm evidence that Petitioners could and did take unjustified and retaliatory action against the Respondents which caused them to expend great amounts of time, energy and financial resources to defend themselves and their basic rights as United States citizens.[12] Is there any question that this type of harassment produces levels of stress and tension in one's life that is uncomfortable and taxing?

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[11] As this Court is aware, Mrs. McIntyre's position on the levy was shared for a time by more than fifty percent of those casting ballots on this issue. The levy failed twice before it was approved the following November.

[12] Justice Stevens concluded this Court's *McIntyre, supra* decision with the following observation: "One would be hard pressed to think of a better example of the pitfalls of Ohio's blunderbuss approach than the facts of the case before us."

Taking on "City Hall" is a formidable and unpopular task that can hardly be characterized as enjoyable even with vindication.

The underlying propositional basis of the Petitioners' previous argument is that if the threat is not effective in controlling the one threatened it is innocuous and not actionable. The logic that follows from such curious reasoning suggests that when a threat is effective (i.e. the person feels intimidated and ceases her or his activity) there is no action taken against the perpetrator of the threat because by definition the victim has been immobilized (the threat was effective).

Conversely, when the threat is ineffective, and the "victim" refuses to comply with the perpetrator's desires and even brings the threat to light, the perpetrator can then cry "no harm, no foul."

Respondents acknowledge that there are cases that can be read to suggest that threats by public officials to use their power and authority or someone else's power and authority (that of the police) to dissuade a person from exercising a right (First Amendment or otherwise) granted to all the citizens of this country, is insufficient to state a claim for the violation of that person's constitutional rights.[13]

Respondents fervently believe that such a proposition, especially as it applies to threats and/or actions by public officials (here the two highest ranking officials of the Westerville City School District) is wrong.

No citizen of this country should have to be subjected to even one threat by a public official or officer to take action against her or him simply because the official disagrees with either the citizen's words or actions. This is especially true, where, as here, the citizen is exercising a constitutionally protected right to express a purely political opinion regarding an important issue of the day. If the accepted rule of law is that provided there are no immediately demonstrable untoward actions taken in furtherance of what is a "mere" threat, the citizen has no cause of action - the rule is harmful to both the dignity of the public office represented by the official and

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[13] Petitioners cited in footnote #2 both *Emmons v. McLaughlin*, 874 F 2d 351, 353 (6th Cir. 1989), and *Goldschmidt v. Patchett*, 686 F.2d 582, 585 (7th Cir. 1982) for that very proposition.

the practical benefits that every citizen should derive from the First Amendment.

Our forefathers who signed their names to the Declaration of Independence and mutually pledged to each other their "Lives" their "Fortunes" and their "sacred Honor," had an understanding of how damaging to the human spirit of a country's citizenry unbridled public officials, drunk with the power and authority of their office and imbued with the feeling of invulnerability, could be. To describe the "absolute Tyranny" perpetrated against the Colonists, the Declaration of Independence provided examples of the most objectionable actions and policies of the "present King of Great Britain." Included early on in that list is the claim that the King has "sent hither swarms of Officers to harass our people, and eat out their substance." This description was not an understatement of the effect that these puppet officials acting as "emissaries of the Crown" had upon the Colonists. Their threats and impertinent actions did indeed eat away at the substance and noble resolve of the people.

These servants of oppression were drunk with the power and authority of their office and imbued with the feeling of invulnerability. Our forefathers considered their actions objectionable, reprehensible and oppressive to the human spirit in spite of the fact that their deeds were in conformance with the edict of their master, the King.

When the debate raged in this country over the formulation and wording of a document that would protect all of its citizens from the abuses of the past, it was recognized by those great and inspired minds who formulated the codification of citizens' rights with the intent to permanently protect them from the brutalities endured by their ancestors, that not only must the public be effectively shielded from the abuses of a tyrannical ruler, but equally guarded from the tendency of the average citizen who, once appointed to a position of power, can become a victim of the temptation that allows that power to corrupt his generosity and tolerance in favor of iron-handed control and the submission of those "below" him to his absolute will. No longer were the men and women of this country to have to rely on the chance that those who "ruled" over them might be, by some stroke of good fortune or fate, benevolent dictators who would suffer

their subjects to exercise a modicum of freedom as long as they did not voice their open and hostile displeasure with the decisions of their "king." It was the absolute intention of the Framers and their counselors that the citizens of this country would be totally free of such abuses.

The "immunity" that is offered to public officials in their official capacity is there only to allow them to carry on the functions of their office unfettered by citizen abuses and unwarranted intrusion - and nothing else. The immunity is not offered to protect them from either the claims, or the anger of those whom they serve (not rule over), even when those officials only threaten to use the power and/or authority of their position to keep a citizen (any citizen) from exercising his or her right to contest the policy or position of any government official regardless of the importance or lack thereof of that official's public station. That threat is akin to, and representative of, the same harassment that the Framers decried.

No immunity should extend to those officials who misuse and dishonor their position by even suggesting that they have it within their authority and/or power to prevent any citizen from expressing their opinion on any issue whatsoever, when the method of that citizen's expression is by an accepted and time-honored peaceful process or procedure.

Respondents maintain that to the extent that there exists a policy of law that permits anyone to exercise, or threaten to exercise, with impunity the type of abusive authority and power that took place in this instance against Margaret McIntyre - that policy of law is wrong and should be changed.

To the extent that there exists within the lower courts in this country and among the general populace (which includes this nation's legal practitioners) a belief that the threat to unjustly use the power and/or authority of one's public office is a tolerable abuse, and not an absolute violation of the constitutional rights enjoyed by all persons, whatever their station in life - that belief should be eradicated.

Respondents ask this Court to grant the writs prayed for by the Petitioners and the Respondents by consolidating this case and Case No. 94-1696 for the reasons cited there and here, and to permanently

lay to rest any tendency by the courts in this country to minimize the abuse of the populace that occurs when public officials threaten a detractor with the intent of dissuading her or him in any way from voicing a political opinion.

II. THE LOWER COURT MISINTERPRETED THE IMPORTANCE OF THE INCIDENT HERE BY ISOLATING IT FROM THE LARGER PICTURE

What was said by the Sixth Circuit relative to Mrs. McIntyre's leaflets misses a very important point. The inclusion of the McIntyre scenario of April 27 and 28, 1988 in Respondents' joint action originally filed in the district court below against all of the Defendants-Appellees (Petitioners herein represent only two of the total), was to delineate an early example of the length to which the Petitioners, and their employer, the Westerville City School District Board of Education, were willing to go to eradicate and eliminate any vocal opposition to their pro-levy position. This "opening salvo" by these two public officials was the first of many heavy-handed attempts by the Defendants below to squelch the opposition. The acts described here were not aimed solely at Mrs. McIntyre, but all who dared to oppose the Board of Education's official position. It was an obvious and blatant example of the willingness of these Petitioners, and those allied with them, to trample on the constitutional rights of others to achieve what they believed to be justifiable ends.

Interestingly enough, but for the vendetta-type attitude of the Petitioners herein, and their effort to extract one more "pound of flesh" from Mrs. McIntyre almost one year after the incidents in question here took place (and five months after the Board of Education's third attempt to pass the levy had finally succeeded), this matter would have likely gone unreported and unnoticed. But here, as with most examples of autocrats overreaching their advantage,[14] they pushed too hard, too far and too much. They

[14] Our forefathers recognized the propensity of people to put up with a certain amount of abuse from authority when they stated in the Declaration of Independence "and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed."

failed to comprehend the tenacity and resolve of not only Mrs. McIntyre, but those other Respondents with whom she had become allied since that first night when she had stood at the school door handing out leaflets virtually alone, supported only by her teenage son and his girlfriend.

The initial McIntyre incident is prologue to the rest of the story, and it is important because it demonstrates a willingness on the part of the Petitioners to use unacceptable and abusive tactics to discredit those who oppose them. As this Court knows from *McIntyre, supra*, the Petitioners' actions did not stop on April 28, 1988. They covered close to a two year period.[15] Exoneration of Mrs. McIntyre for her "illegal" activity took more than five years. Mrs. McIntyre did not live to witness it.

In spite of this history, Petitioners still promote their righteousness in this matter as if they are the sacrificial lambs being led to the slaughter by a system which has mistakenly ignored their justifiable pleas emanating from the sanctum sanctorum of "qualified immunity." Respondents respectfully, but adamantly disagree with Petitioners' argument, and believe that the facts speak louder than any case law which may appear to support the Petitioners' position.

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[15] The hearing on the original filing by Petitioner Hayfield before the Ohio Elections Commission was held on July 17, 1989. The hearing on the July 25, 1989 refiling did not take place until March 19, 1990. Petitioner Hayfield drew salary from his employer (the Westerville City School District Board of Education) while attending that hearing. Jt. Apx. at 1375. His participation in the hearing process was known to and supported by Petitioner Husarik. Jt. Apx. at 1374-75.

CONCLUSION

No person should be denied the right to express his or her opinion. When government supports in any measure the "right" of any public official to play the part of "king" and bend the law to appear as though the public official has the right to be the ruler rather than the servant, then government and that public official have failed to understand the relationship that was established by those men and women who fought and died for the rights which we all enjoy as citizens of the United States of America.

This country was intended to be, and is, the pinnacle of individual freedom. No place on earth are the rights of the individual more sacred than here in America. If any group or person is permitted to set themselves or himself up as the determiner of what is right or best for the general populace, then they are destroying and can eliminate the freedoms which we, as a people, hold so dear.

Similarly, if through the niceties of the law, "understood" by only a relatively small handful of people who "practice" this art, the courts are permitted to turn a deaf ear to the cries of a people abused by their own elected and appointed officials who would deny them their inalienable rights, then individual freedom, as we know it, is not in the process of disappearing - it is already gone.

Petitioners herein, would have this Court support their right to abuse this country's citizens by threatening them and using the law to take retaliatory actions against them for daring to question Petitioners' authority or oppose their views. Petitioners would use the law that was put in place to protect them from unacceptable and unwarranted abuse to permit them to abuse others. This result cannot be the logical intention of "immunity" rulings and legislation. No one has the right to hide behind the law to bring about an unjust end. Yet, it seems clear that such an interpretation is not only possible, but given the argument by the dissent in the circuit court below, probable.

Respondents (Plaintiffs-Appellants below) believe that the points debated here and in the companion petition represent questions that churn at the soul core of our constitutional system. They are of the utmost importance. They ultimately affect some of the most basic

individual freedoms and rights - freedom of speech, the right to petition the government for a redress of grievances, trial by jury - rights inestimable to the individual "and formidable to tyrants only." Taken together these rights and others preserve for the people the ultimate freedom - freedom from the oppression of government.

For the reasons cited, Respondents pray that this Court will consolidate this case with case No. 94-1696 and that a writ(s) of certiorari will issue.

Respectfully submitted,

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(DISCUSSION OFF THE RECORD.)

MR. HAYFIELD: MR. CHAIRMAN, MAY I SPEAK, SIR?

MR. IGOE: I THINK WE'RE FINISHED --

MR. HAYFIELD: OKAY.

MR. IGOE: -- UNLESS YOU GOT SOMETHING ELSE, OTHER EVIDENCE, BUT EDITORIAL COMMENTS, I DON'T THINK WE --

MR. HAYFIELD: ONE COMMENT. AFTER -- THE ORIGINAL MEETINGS WE HAD SCHEDULED HAD NOTHING TO DO WITH THE CAMPAIGN. AFTER THE MEETING WE FOUND MOST OF THE FLIERS WERE DISTRIBUTED IN A WASTEPAPER CAN, AND I HAD THE CUSTODIAN IN EACH MEETING GO THROUGH TO SEE IF WE COULD FIND ANY PIECE OF LITERATURE THAT HAD THE NAMES AFFIXED TO IT. WE FOUND NONE, AND I SAW NO GOOD REASON TO SUBMIT BOXES OF LITERATURE TO YOU.

(DISCUSSION OFF THE RECORD.)

MS. WASHINGTON: IN THE CASE OF 89A-9, FIND NO VIOLATION OF OHIO REVISED CODE 3517.10(D), NO VIOLATION OF 3017.13(E), FIND A VIOLATION OF 3599.00 AND IMPOSE A FINE OF -- EXCUSE ME, 3599.09 AND IMPOSE A VIOLATION OF $100.

MS. MOSS: SECOND.

MR. IGOE: ALL IN FAVOR.

ALL COMMISSION MEMBERS: AYE.

MR. IGOE: THANK YOU.

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[Certificate Omitted in Printing]